

## **XI: FREQUENTLY ASKED QUESTIONS**

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### **1) What is the maximum term for an EMS Contract?**

The maximum term for either the RFP process (§11C) or the RFQ process (§11I) is twenty years.

### **2) What is an Energy Service Company or ESCO?**

Energy Service Companies (known as ESCOs) are firms that coordinate all of the activities of a performance contracting project, including: technical audits, design engineering, equipment installation, construction management, project financing, staff training, equipment maintenance and project monitoring. There are many qualified ESCOs pursuing Energy Management Services Contracting projects in New England. Follow the link at [mass.gov/doer/Energy Management Services](http://mass.gov/doer/Energy%20Management%20Services) for a complete list of companies certified in Energy Management Services in Massachusetts.

### **3) What payment arrangements are available for Energy Management Services (EMS)?**

There are various types of payment arrangements. Third-Party Financing is an alternative method of procuring energy and water conservation equipment at little or no up-front cost. Equipment is generally purchased through the energy and water cost savings generated by the conservation equipment installed. This type of arrangement may require a 10 to 12 year contract (20 years being the maximum allowable term) whereby the ESCO guarantees that the energy savings resulting from the improvements will be greater than the project costs. Municipalities may use a combination of funds including utility rebates, lease arrangements, municipal bonds, capital funds, operating funds, grants, and Renewable Energy Trust Funds.

### **4) EMS contracting allows the same contractor to perform both design and construction. Does that conflict with M.G.L. c. 30B?**

No. One may undertake EMS contracting as specified in Massachusetts General Laws Chapter 25A §11C and §11I. This statute allows for the purchase of a “program of services” including, design and construction work that is primarily intended to reduce energy and water consumption.

### **5) Why should I consider EMS contracting instead of a regular construction project?**

You would want to consider EMS contracting to reduce your energy bills and obtain new capital equipment with little or no up-front capital investment. Most public agencies consider EMS contracting when they have identified energy conservation potential in their buildings, but do not have sufficient funding to make the improvements.

In addition, EMS contracting offers significant benefits that are not usually associated with standard construction projects, such as, a performance guarantee, expertise that is otherwise not available, or staff training for preventative maintenance. Over the contract term, an ESCO may train facility staff to optimize the performance of installed equipment.

EMS Contracting also allows the contracting entity to minimize risks related to the recouping of costs associated with new efficiency equipment when the ESCO guarantees a specified amount of energy

savings because of the installed measures. When guaranteeing a certain level of savings, if those guaranteed savings do not materialize, the ESCO then pays the difference.

**6) What sort of equipment can I fund with an EMS contract?**

Under an EMS contract, Public Agencies may procure any equipment that saves energy or water including, but not limited to the following: energy controls, lighting retrofits, HVAC upgrades, fuel switching, high efficiency motors, and pumps, heat recovery systems, renewables, on sight electricity generation, and cogeneration.

**7) We have insufficient funds to support an EMS contract for all of the efficiency improvements that we would like to make. Can we add bond funds?**

Municipalities may provide bond funding. Supplying additional funding may allow you to add improvements with longer paybacks such as windows or insulation, which would not normally be considered by an ESCO.

Although you may “subsidize” an EMS Contracting project, clearly state the value that the funds add to a project. For instance, if you consider a cost-based approach to the final contract, you might identify the specific equipment installed because of your investment in the project.

**8) What can we do if our energy and water bills are high, but we have very limited funds?**

If you are short on funds but your annual energy and water utility bills total over \$1,000,000, you may have the potential to develop a successful EMS Contract, depending on the energy efficiency opportunities of your facilities. If your energy and water consumption is too small, consider collaborating with other entities. (Aggregating several projects into one.)

The amount you can save on your utility bills depends on many things: the design of your building, how heavily it is used, whether you are already conserving effectively, alternate fuels available, the amount of capital you can invest, etc.

**9) I need a custodian. Can I get one through EMS contracting?**

No. To hire a custodian or procure services that are primarily maintenance in nature, you must follow specifications outlined in M.G.L. c. 30B.

**10) We are planning major renovations to our buildings in the next few years. Should we still consider EMS Contracting?**

Only if energy and water baselines can be established as reference points for the EMS contract. EMS contracting is a viable financing option if you are planning to improve your energy and water systems, but if renovations increase utility costs, reconsider or delay implementing an EMS contract. Improvements with little impact on utility costs, such as roofing or disability access, have little effect on energy savings from an EMS contract.

**11) Our town hall needs a lot of work, but it is not big enough for an EMS contract. What can we do to develop a viable project?**

Expand the scope of the project by either including more buildings or evaluating additional conservation improvements. The buildings in a project should cost enough in annual utility bills, including gas, electricity, water, and oil to generate sufficient savings to cover the investment. Often a single building is not big enough to support a successful EMS contracting project. For example, consider expanding the project to include schools, libraries and water treatment plants over which the city or town has jurisdiction, or consider joining with another municipality in a combined bid.

Some of the smaller towns may want to explore advertising their project with others. For successful projects, determine the evaluation criteria, the method of allocating savings, and the contract monitoring before advertising the project. The simplest approach would be to include “common measures” to purchase in bulk by a joint bid.

**12) A contractor claimed that our buildings have great potential for energy and water efficiency improvements. They offered to perform an audit and provided a sample Request for Responses. Should I accept?**

*Do not rely on a contractor to develop your Request for Responses (RFR) or Request for Qualifications (RFQ), either for the document itself or for audit services if the contractor may bid on the RFR.* Working with an ESCO, either before or during the procurement process may be perceived as giving unfair preference and hindering fair competition. You may face bid protests; legal protests or, at a minimum, forced to re-bid the project.

However, hiring a consultant to conduct an energy audit of the premises and to assist in establishing Measurement and Verification standards and to monitor the actual energy savings achieved may prove to be very helpful, so long as they (and any ESCO’s they are associated with) are forbidden from bidding on the project.

**13) Will I get contractors that are more qualified if I require several DCAM certifications?**

In accordance with M.G.L. c.25A §11C §11I and 225 C.M.R. 10.00, Public Agencies must require that firms obtain DCAM certification. However, a company needs only one Energy Management Services certification. Requiring additional certifications, such as Electrical or HVAC, will unnecessarily limit competition to those few firms that possess the combination of certifications that you are requesting. Firms that meet the criteria for Energy Management Services are fully capable of performing extensive electrical, heating, and ventilation services.

**14) We would like to expedite this process. How long do I need to advertise?**

The law requires you to allow two (2) weeks between initial advertising and response submission deadline. However, good business practices would indicate that at least six (6) weeks is a more realistic period given the level of complexity of these projects. You will want to ensure that ESCOs responding to your RFR/RFQ have enough time to review the buildings and accurately assess their energy savings potential.

Giving firms at least six (6) weeks to respond to the RFR, also decreases the likelihood of bid protests based on the perception that one firm had prior or preferential access to the site during the brief two-week interval. The six-week timeframe will also give more firms time to learn of the project, thus increasing the competition and quality of responses.

**15) I do not know how to verify the savings. Should I let contractors suggest the best method?**

Do **not** rely on ESCOs who will be bidding on the project to develop the baseline or measurement and verification method. It is the Local Governmental Agency's responsibility to assure that the baseline is accurate. **You will want to base the contract on a baseline that fairly and accurately reflects the facility's energy consumption patterns.** However, you may consider hiring a consultant to assist in establishing Measurement and Verification standards and to monitor the actual energy savings achieved, so long as they (and any ESCO's they are associated with) are forbidden from bidding on the project. [Refer to the FEMP M&V Guidelines, V. 3, for accepted methods.](#)